IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

ST.Rev..No. 107 of 2005()

TA.580/2001 of S.T.A.T.ADDL.BENCH,ERNAKULAM

REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA, REPRESENTED BY
THE JOINT COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES
SRI.V.V.ASHOKAN

RESPONDENTS: RESPONDENT/ASSESSEE:

M/S. TIPS & TOES COSMETICS INDIA LTD.,
KALLIYATH BUILDING, MAMANGALAM, ERNAKULAM.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

S. T. REV. NO. 107 OF 2005
and
C. M. APPL. NO. 207 OF 2005

Dated this the 14th June, 2007

O R D E R

H.L.DATTU, C.J.

Learned counsel appearing for the respondent has no serious objection in condoning the delay in filing the revision petition. Therefore, the delay in filing the revision petition is condoned.

2. The Revenue calls in question the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal, Ernakulam in T.A.No.580 of 2001 for the assessment year 1995-96, dated 18.2.2003. The Tribunal while allowing the assessee's appeal has taken the view that the sale of 'Shingar Kajal' is an ayurvedic medicine and not a cosmetic item.

3. Aggrieved by the findings and conclusions reached by the Tribunal, the Revenue is before us in this revision petition.

4. The question of law raised for our consideration and decision is as under:

> "Whether on the facts and in the circumstances of the case, the Tribunal is justified in finding that 'Shingar Kajal' is an ayurvedic medicine and not a cosmetic item?"

5. The question of law raised by the Revenue is not debatable in view of the law declared by a Division Bench of this Court in **State of Kerala** v. **M/s.Tips & Toes Cosmetics India Ltd**. (2004) 12 KTR 253 (Ker). In the said decision, this Court has observed as under:

> "In the present case the assessee had explained the nature of 'Kajal', its product and had also produced the drug license issued under the Drugs and Cosmetics Act which showed that the 'Kajal' is an ayurvedic medicine. No evidence has been adduced on the side of the Revenue controverting the case put forward by the assessee regarding the nature of he product. It is not the mere user of the commodity that matters, for, a particular commodity may be used for multi purposes. How the commodity is understood in common parlance is the decisive test though, the user of the commodity is also relevant in certain cases. Following the decision of the Division Bench in **Deputy Commissioner (Law), Vs. M.P.Ramachandran** (1998) 6 KTR 75 (Ker) it was held that the items "Kajal" dealt with by the assessee is an Ayurvedic medicine liable to tax at the rate applicable under Entry 79 of the First Schedule to the Act".

6. We are bound by the law declared by the Division Bench of this Court in the aforesaid decision.

7. Respectfully following the observations made in the aforesaid decision, the question of law raised by the Revenue requires to be answered in negative and in favour of the assessee. It is further declared that the sale of 'Shingar Kajal' should be brought under entry 87

of the First Schedule.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T. SANKARAN)
Judge

ahz/DK